SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1946

No. 256

GLOBE, FORGAN & CO.,

Appellant,

vs.

THE UNITED STATES OF AMERICA, THE PULLMAN COMPANY, PULLMAN-STANDARD CAR MANUFACTURING COMPANY, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

STATEMENT AS TO JURISDICTION

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INDEX

Subject Index

	Page
Statement as to jurisdiction	1
Jurisdiction	1
Statute involved	2
The issues and the ruling below	2
The questions are substantial	5

Table of Cases Cited

Interstate Circuit, Inc. v. *U. S.*, 306 U. S. 208	2
United States v. *American Tobacco Co.*, 221 U. S. 106	2
United States v. *Crescent Amusement Co.*, 323 U. S. 173	2
United States v. *The Pullman Co.*, 50 Fed. Supp. 123	3

Statutes Cited

Act of Congress of July 2, 1890, Sections 1, 2 and 4 (26 Stat. 209, as amended, 15 U. S. C. 1, 2, and 4)	2
Expediting Act of February 11, 1903, Section 2, as amended (32 Stat. 823, 36 Stat. 1167, 15 U. S. C. 29)	1
Judicial Code, Section 238, as amended (36 Stat. 1157, 38 Stat. 804, 43 Stat. 938, 28 U. S. C. 345)	1

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STATEMENT AS TO JURISDICTION

(Filed March 5, 1946)

In compliance with Rule 12 of the Supreme Court of the United States, as amended, Glore, Forgan & Co. submits herewith its statement particularly disclosing the basis upon which the Supreme Court has jurisdiction on appeal to review the judgment of the District Court entered in this cause on January 4, 1946. A petition for appeal was filed on March 5, 1946, and is presented to the District Court herewith, to wit, on March 5, 1946.

Jurisdiction

The jurisdiction of the Supreme Court to review by direct appeal the judgment entered in this cause is conferred by Section 2 of the Expediting Act of February 11, 1903, as amended (32 Stat. 823; 36 Stat. 1167; 15 U. S. C. 29), and Section 238 of the Judicial Code, as amended (36 Stat. 1157; 38 Stat. 804; 43 Stat. 938; 28 U. S. C. 345).

The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on direct appeal in this case:

United States v. *Crescent Amusement* Co., 323 U. S. 173.
Interstate Circuit, Inc., v. *United States*, 306 U. S. 208.
United States v. *American Tobacco Co.*, 221 U. S. 106.

Statute Involved

The pertinent provisions of Sections 1, 2 and 4 of the Act of July 2, 1890, 26 Stat. 209, as amended, 15 U. S. C. 1, 2, and 4, commonly known as the Sherman Act, are as follows:

> Sec. 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal: * * *. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a misdemeanor, * * *.
>
> Sec. 2. Every person who shall monopolize or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, * * *.
>
> Sec. 4. The several district courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney-General, to institute proceedings in equity to prevent and restrain such violation. * * *.

The Issues and the Ruling Below

On April 20, 1943, the District Court rendered its opinion in this cause in which it held that defendants, The Pull-

man Company (Pullman), Pullman-Standard Car Manufacturing Comapny (Pullman-Standard), Pullman, Inc., and certain officers of said corporate defendants had violated Section 1 and Section 2 of the Sherman Antitrust Act quoted above: 50 F. Supp. 123. Pullman operates and services sleeping cars; Pullman-Standard manufactures sleeping cars and other railroad equipment; and Pullman, Inc. is a holding company owning the stock of the first two companies. The opinion of the District Court determined further that there should be a separation of Pullman's sleeping-car business from Pullman-Standard's manufacturing business.

On May 8, 1944 the District Court entered its final judgment, the purpose of which, as announced in paragraph 7 thereof, is to be the complete and perpetual separation of the Sleeping Car Business from the Manufacturing Business as therein defined. Pullman, Inc. by the final judgment, was given 90 days within which to elect to dispose of the Sleeping Car Business or of the Manufacturing Business, and at the same time submit to the District Court for hearing and approval a plan to effect such separation.

On October 2, 1944 Pullman, Inc. filed with the District Court a "Plan for Separation of the Sleeping Car Business from the Manufacturing Business" and concurrently filed its election "to dispose of all its interest in the Sleeping Car Business and the properties used in connection therewith."

On March 22, 1945 the District Court entered an order authorizing Pullman, Inc. to cause Pullman "to offer to treat" with the railroads or others for the sale of the "sleeping car business and the properties connected therewith" or for the sale of all shares of stock of Pullman owned by Pullman, Inc. Such order provided that any contract for the sale of stock of Pullman should be subject to the approval of the District Court and to the requirements of the final judgment of May 8, 1944.

On March 12, 1945 Pullman, Inc. offered to sell its Pullman stock to the railroads generally for about $75,000,000.

On August 29, 1945 Otis & Co. intervened in the cause and submitted a plan for the purchase of the Pullman stock. Thereafter, in order, Glore, Forgan & Co., Standard Steel Spring Company, and the Atchison, Topeka and Santa Fe Railway Company and certain other railroads (Railroad Group) likewise intervened and submitted offers to purchase the stock of Pullman. The offer of the Railroad Group amounted to some $17,000,000 less than the offer of sale made to the railroads generally by Pullman, Inc.

Hearings were had on these four offers on November 5 and 6, 1945. Testimony and exhibits were presented. Immediately after these hearings the Railroad Group accepted in substance the offer made to the railroads generally by Pullman, Inc. in May, 1945.

On December 18, 1845 the District Court, having heard argument by the parties in interest, rendered an opinion approving, upon certain conditions, the proposed sale to the Railroad Group.

On January 4, 1946 the District Court entered a final order approving the sale to the Railroad Group, subject to the following conditions: (1) that there shall be no interlocking directors as between Pullman, Inc. and any vendee railroad or Pullman, and as between Pullman-Standard and Pullman or any vendee railroad; (2) that any new sleeping cars required by Pullman shall be purchased only after competitive bidding under applicable regulations of the Interstate Commerce Commission; and (3) that any vendee railroad shall purchase any sleeping cars only after like competitive bidding. The order also provided that Pullman and anyone to whom the Pullman stock or assets might thereafter be sold by the Railroad Group (1) shall be bound by all of the provisions of the final judgment of May 8, 1944, and (2) shall agree to enter into a contract to supply, as

available and upon proper terms, any of its excess sleeping cars to a railroad desiring them.

It is the contention of Glore, Forgan & Co. that:

(1) The plan approved by the District Court substitutes for a monopoly which has been adjudicated illegal, a new monopoly consisting of a combination of railroads doing substantially all the sleeping-car business in the United States, contrary to the intent, purpose and terms of the Sherman Act.

(2) The District Court erroneously failed to hold that the offer of Glore, Forgan & Co. for the purchase of The Pullman Company would eliminate the monopoly which the Court had condemned would most effectively dissipate the effects of such monopoly, and would be in the public interest.

The Questions Are Substantial

The plan approved by the District Court grants to a combination of competing railroads doing substantially all the sleeping-car business in the United States a monopoly of the operation, maintenance, and servicing of all sleeping cars for a period of at least three years. The sale to the Railroad Group is in effect an agreement by the participating railroads not to do business with any one furnishing or servicing sleeping cars except Pullman. The Railroads which are parties to this plan could not be expected to contract for the use of sleeping cars or for sleeping-car service with any other company so long as they own or control Pullman. Obviously, no new independent company could enter the field.

An arrangement among buyers to deal only with one seller is abhorrent to the principles of the Sherman Anti-trust Act. Those who enter into such an arrangement voluntarily restrain themselves from independent dealings and involuntarily restrain existing and prospective competitors from a free and open market.

On the other hand, the offer of Glore, Forgan & Co. for the purchase of Pullman, providing as it does for an independently operated company publicly owned, would avoid the evils inherent in the plan approved by the District Court.

The problems thus presented in the appeal of Glore, Forgan & Co. involve substantial questions in the enforcement, operation and execution of Sections 1 and 2 of the Sherman Act. A basic question is whether the District Court under the facts in this case has substituted a new monopoly for the monopoly held illegal in its decision and judgment. Because of the interest of the public in the maintenance of an efficient sleeping-car service, operated under competitive conditions, this question is substantial. Another substantial question is the extent of the power and the duty of the District Court with respect to approval of a sale of the property to be disposed of by Pullman, Inc. under the District Court orders.

For copies of the opinions, findings of fact and conclusions of law entered by the District Court in this cause, reference is respectfully made to the Statement as to Jurisdiction heretofore filed by the Government herein, to which such copies are appended.

Respectfully submitted,

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